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SPEAKING NOTES

FOR THE HONOURABLE MARTIN CAUCHON

SECRETARY OF STATE

(FEDERAL OFFICE OF REGIONAL

DEVELOPMENT - QUÉBEC)

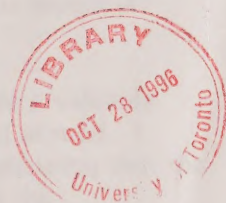
TO THE

96 ANNUAL COMPETITION LAW CONFERENCE

THE CANADIAN BAR ASSOCIATION

OTTAWA, ONTARIO

SEPTEMBER 27, 1996

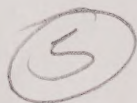


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INTRODUCTION

Good afternoon ladies and gentlemen. Thank you for inviting me to address the annual meeting of the Competition Law Section of the Canadian Bar Association. As you are no doubt aware, my main responsibility is for the Federal Office for Regional Development in Quebec. However, I have this year taken on additional responsibilities relating to *Competition Act* amendments at the request of Minister Manley.

I appreciate the broad application of competition law and the controversy changes can engender. A few weeks ago, I attended a Federal/ Provincial/ Territorial meeting of Ministers responsible for consumer affairs in Toronto. It was interesting to note the frequency with which competition law issues emerged or were at least relevant to the discussions we had.

In my address today, I would like to provide you with a status report on *Competition Act* amendments.

I understand that this Section, in a few short years, has made a valuable contribution to the understanding of competition law in Canada and abroad. I applaud your work in this complex area, and your commitment to ensuring that the Canadian marketplace is well-served by the principles articulated in the *Competition Act*.

**COMPETITION LAW CONTRIBUTES TO THE SUCCESS OF THE
GOVERNMENT'S JOBS AND GROWTH AGENDA AND TO ACHIEVING A
COMPETITIVE MARKETPLACE AND ECONOMY BY FOSTERING
INNOVATION, COMPETITIVE PRICES AND CONSUMER CHOICE.**

My government shares your commitment. In February of this year, we announced in the Speech from the Throne that we would "continue to take appropriate action to promote a proper climate for economic growth and jobs" including the introduction of "proposals to strengthen the economic framework with improvements in the areas of competition, bankruptcy, and copyright."

These initiatives represent key components of the business environment that foster innovation, productive use of resources and, in the case of the *Competition Act* in particular, better prices and product choices for consumers. Open and competitive markets are also increasingly recognized as a key requirement for the

development of internationally competitive industries. Finally, by placing the greatest reliance possible on market forces, the law encourages economic efficiency and reduces the need for direct government intervention in the economy.

PERIODIC REVIEW OF THE OPERATION OF FRAMEWORK LAWS, SUCH AS THE *COMPETITION ACT*, IS NECESSARY TO ENSURE THAT THEY KEEP PACE WITH CHANGES AFFECTING THE CANADIAN ECONOMY.

Canada's *Competition Act* was last substantially amended in 1986. While the basic economic philosophy reflected in the *Act* remains appropriate, as do the majority of its provisions, the Canadian marketplace has not stood still over the past decade.

The dismantling of trade barriers and the globalization of business has had a profound effect on many Canadian industries. Businesses are continually challenged to address new market demands, develop new opportunities and enhance efficiency.

Consumers have grown in sophistication, but face ever-increasing challenges presented by new methods of marketing products, and new vehicles for the dissemination of information.

Small business has proven to be a vibrant contributor to the growth of our economy, through the development of specialized product niches and the exploitation of new technologies.

The *Competition Act* must keep pace with the changes affecting the Canadian economy. We must continue to ensure that the rules of the game are clear, and that they do not unnecessarily hinder legitimate business activity. We must ensure appropriate safeguards are in place to benefit all participants in the marketplace. And we must be satisfied that the enforcement tools available allow for efficient and effective resolution of issues when they arise.

THE *COMPETITION ACT* AMENDMENTS REPRESENT A FOCUSED PACKAGE OF REFORMS.

In the past, amending the *Act* proved to be a difficult and lengthy process. Of course, previous amendment initiatives involved a major overhaul of the legislation.

Those of you who have closely followed the process to date will appreciate that this is not the approach we are following. This is not a fundamental review of the basic model under which businesses operate in Canada. On the whole, the government considers the *Act* to be working well.

This amendments initiative is a focused package of reforms. It deals with selected issues that have proven, through consultations and study, to be the most important areas for reform, and those around which there is public agreement for the need for change. The proposed reforms reflect a consensus-building approach to legislative renewal.

EXTENSIVE CONSULTATIONS HAVE RESULTED IN A LEGISLATIVE AMENDMENTS PACKAGE THAT IS BALANCED AND WORKABLE.

This amendments initiative has moved forward smoothly and steadily. This is partly attributable to the significant contribution that has been made by stakeholders, like the CBA.

From the initial release of the Discussion Paper in June 1995, through the focus groups on issues like prenotification and confidentiality, and the work of the Consultative Panel, stakeholders have contributed to a partnership to create an amendments package that is balanced and fair.

I believe that this process has been facilitated by the transparency and openness that have characterized our discussions and deliberations. Ever since the release of the Discussion Paper, stakeholders have commented and we have listened. The responses to the Discussion Paper helped us to see different aspects of the issues under review. It also helped us to appreciate the positive features of our current regime better. Finally, the comments received led us to explore new ways to address problems acknowledged by government and stakeholders.

This give and take between stakeholders, and the adjustment adopted by the government, resulted in a balanced and workable package. I'd like to name a few examples:

- we have adopted a new approach in respect of the promotion of ordinary price claims, as a response to concerns by consumers and retailers that the existing law did not reflect purchasing patterns or advertising practices in the marketplace;

- we have narrowed the original proposal relating to Prohibition Orders, while retaining the necessary flexibility to ensure that this is a valuable and useful alternative case resolution mechanism; and
- we have adopted the concept of civil monetary penalties in lieu of restitution orders in the misleading advertising area, to ensure better certainty for businesses.

I believe that I can say this package is as much the stakeholders' package, as it is the government's. We are pleased and comfortable with the balance that has been struck.

**FURTHER CONSULTATIONS COUPLED WITH OTHER DEVELOPMENTS
HAVE LED THE GOVERNMENT TO EXCLUDE SOME ELEMENTS FROM THE
PACKAGE OF LEGISLATIVE AMENDMENTS CURRENTLY UNDER
CONSIDERATION.**

I know you have been following the amendments consultations with keen interest, and want to know what the government will be doing as it enters the next stages of the amendments process. I would now like to turn the discussion towards the substantive reforms that are being proposed.

Most of you are aware that, as a result of the extensive process of consultation, the government has decided not to proceed at this time on two proposals that figured in the discussion paper: access to the Competition Tribunal by private parties and repeal of the price discrimination and promotional allowances provisions. These proposals raised strong, although by no means universal, opposition by segments of the business community. As a result, we decided that they warranted further study to determine the appropriate course of action.

On the subject of access, the Competition Bureau has just released a comprehensive study which I expect will spur further discussion in the months ahead. I want to be clear, though, that the release of this study should not be interpreted as leaving open the possibility of including the subject in this round of amendments. This is not the case. However, it is appropriate for the Bureau to continue to explore the issue with stakeholders.

CONFIDENTIALITY AND INTERNATIONAL MUTUAL ASSISTANCE

In addition to these two elements, we must now decide whether to proceed with amendments on confidentiality and international mutual assistance -- not because of certain stakeholder opposition, but because of developments out of the courts.

We made considerable progress toward achieving consensus on this subject during the consultation process. However, the decision of the Federal Court (Trial Division) in *Schreiber v. Attorney General of Canada*¹ was then released.

While the effects of this decision have been stayed, the government's current proposal does not contemplate a system of prior judicial authorization of requests for assistance as required by the *Schreiber* decision. In light of this decision, and the pending appeal that may clarify what is constitutionally required, it appears to me that amendments to the *Competition Act* in this area would be premature.

Because we believe the issues of the confidentiality of information and international mutual assistance need to be considered together, and we want a regime that reflects the best possible understanding of constitutional requirements, I believe it would be prudent to hold up amendments in this area until the *Charter* issues are clarified.

KEY ELEMENTS OF REFORM

Now, I would like to briefly review the key elements we would propose for amendment:

- with respect to deceptive marketing practices, we are proposing an improved approach that would directly benefit consumers and businesses by changing the focus from punishment to quick and efficient compliance. Consumers will receive more accurate marketplace information and businesses' "bottom line" will be better protected from deceptive marketing practices by their competitors.

¹ (4 July 1996), (F.C.T.D.) [unreported], suspension of effects pending appeal granted conditionally (25 July 1996) and conditions satisfied (30 July 1996).

- the law on comparative price advertising -- a powerful means by which retailers compete -- will be clarified to assist consumers in making price comparisons and provide fair and effective rules of the game for businesses.
- amendments in the area of deceptive telemarketing would contribute significantly to solving this problem, thereby protecting consumers and enhancing the effectiveness of telemarketing as a means to promote legitimate business interests. This is being done as part of a concerted effort by Federal, provincial and local agencies, as well as the private sector.
- regarding prohibition orders, we propose to expand the scope of available terms, thereby rendering this case resolution mechanism a more effective tool to promote compliance with the criminal law provisions and avoid costly prosecutions.
- regarding merger reviews, an area that is extremely important to the Canadian economy, streamlined and more effective procedures will be adopted.

These amendments represent considerable effort on the part of government and stakeholders to arrive at valuable and timely solutions to sometimes complex issues.

We are in the process of drafting the legislation now and, subject to the busy Parliamentary agenda, hope to have a Bill in the House in due course. We're counting on your support.

CONCLUSION

Competition law and policy is becoming more and more central to the health of the Canadian economy. The application of the law by the courts is increasingly sophisticated. Business and consumer awareness of the law is higher than it has ever been.

Permit me, in conclusion, to express my appreciation for the efforts of the members of the Competition Law Section -- indeed, all stakeholders -- over the past year in commenting on the Competition Bureau's Discussion Paper and the Consultative Panel's report, as well as your general contribution to issues of public policy in the competition law field.

